

IC 23-19-4

Chapter 4. Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers

Effective 7-1-2008.

IC 23-19-4-1

Broker-dealer registration; exemptions; restrictions on employment or association; foreign transactions

Effective 7-1-2008.

Sec. 1. (a) It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this article as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) The following persons are exempt from the registration requirement of subsection (a):

(1) A broker-dealer without a place of business in this state if its only transactions effected in this state are with:

(A) the issuer of the securities involved in the transactions;
(B) a broker-dealer registered as a broker-dealer under this article or not required to be registered as a broker-dealer under this article;

(C) an institutional investor;

(D) a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting for the account of others under discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this state, and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(F) a bona fide preexisting customer whose principal place of residence is in this state but who was not present in this state when the customer relationship was established, if:

(i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) within forty-five (45) days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five (75) days after the date on which the application is filed, or, if earlier, the date on which the commissioner notifies the

person that the commissioner has denied the application for registration or has stayed the pendency of the application for good cause;

(G) not more than three (3) customers in this state during the previous twelve (12) months, in addition to those customers specified in clauses (A) through (F) and under clause (H), if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and

(H) any other person exempted by rule adopted or order issued under this article.

(2) A person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.

(c) It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the commissioner under this article, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this article may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) A rule adopted or order issued under this article may permit:

(1) a broker-dealer that is registered in Canada or another foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) an individual from Canada or another foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(B) an individual from Canada or another foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) an individual who is present in this state, with whom the broker-dealer customer relationship arose while the

individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in subdivision (1).

As added by P.L.27-2007, SEC.23.

IC 23-19-4-2

Agent registration; exemptions; restrictions on employment or association; restrictions if no affiliation

Effective 7-1-2008.

Sec. 2. (a) It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this article as an agent or is exempt from registration as an agent under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)(2)).

(2) An individual who represents a broker-dealer that is exempt under section 1(b) or 1(d) of this chapter.

(3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by IC 23-19-2-2, other than IC 23-19-2-2(11) and IC 23-19-2-2(14).

(5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(6) An individual who represents a broker-dealer registered in this state under section 1(a) of this chapter or exempt from registration under section 1(b) of this chapter in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting for the account of others under discretionary authority in a signed record.

(7) An individual who represents an issuer in connection with the purchase of the issuer's own securities.

(8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts.

(9) Any other individual exempted by rule adopted or order issued under this article.

(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this article or an issuer that is offering, selling, or purchasing its securities in this state.

(d) It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) An individual may not act as an agent for more than one (1) broker-dealer or one (1) issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this article.
As added by P.L.27-2007, SEC.23.

IC 23-19-4-3

Investment advisor registration; exemptions; restrictions on employment or association

Effective 7-1-2008.

Sec. 3. (a) It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this article as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) The following persons are exempt from the registration requirement of subsection (a):

(1) A person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this article, or broker-dealers registered under this article;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) any other client exempted by rule adopted or order issued under this article.

(2) A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under subdivision (1).

(3) Any other person exempted by rule adopted or order issued

under this article.

(c) It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this article, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the commissioner, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this article as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under section 4(a) of this chapter or is exempt from registration under section 4(b) of this chapter.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-4

Investment adviser representative registration; exemptions; restrictions on conducting business; referrals

Effective 7-1-2008.

Sec. 4. (a) It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this article as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who is employed by or associated with an investment adviser that is exempt from registration under section 3(b) of this chapter or a federal covered investment adviser that is excluded from the notice filing requirements of section 5 of this chapter.

(2) Any other individual exempted by rule adopted or order issued under this article.

(c) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this article or a federal covered investment adviser that has made or is required to make a notice filing under section 5 of this chapter.

(d) An individual may transact business as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser unless a rule adopted or order issued under this article prohibits or limits an individual from acting as an investment adviser representative for more than one (1) investment

adviser or federal covered investment adviser.

(e) It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this article, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the commissioner, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) An investment adviser registered under this article, a federal covered investment adviser that has filed a notice under section 5 of this chapter, or a broker-dealer registered under this article is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this article, a federal covered investment adviser who has filed a notice under section 5 of this chapter, or a broker-dealer registered under this article with which the individual is employed or associated as an investment adviser representative.
As added by P.L.27-2007, SEC.23.

IC 23-19-4-5

Federal covered investment adviser requirements; exemptions; filing

Effective 7-1-2008.

Sec. 5. (a) Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) The following federal covered investment advisers are not required to comply with subsection (c):

(1) A federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this article, and broker-dealers registered under this article;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state; or

(D) other clients specified by rule adopted or order issued under this article.

(2) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under

subdivision (1).

(3) Any other person excluded by rule adopted or order issued under this article.

(c) A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with IC 23-19-6-11, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this article and pay the fees specified in section 10(e) of this chapter.

(d) The notice under subsection (c) becomes effective upon its filing.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-6

Application for initial registration; requirements; amendments; effective period; renewal; waivers

Effective 7-1-2008.

Sec. 6. (a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with IC 23-19-6-11, and paying the fee specified in section 10 of this chapter and any reasonable fees charged by the designee of the commissioner for processing the filing. The application must contain:

(1) the information or record required for the filing of a uniform application; and

(2) upon request by the commissioner, any other financial or other information or record that the commissioner determines is appropriate.

(b) If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) If an order is not in effect and a proceeding is not pending under section 12 of this chapter, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this article may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

(d) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 12 of this chapter, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this article, by paying the fee specified in section 10 of this chapter, and by paying costs charged by the designee of the commissioner for processing the filings.

(e) A rule adopted or order issued under this article may impose other conditions, not inconsistent with the National Securities

Markets Improvement Act of 1996. An order issued under this article may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-7

Succession; organization change; name change; change of control
Effective 7-1-2008.

Sec. 7. (a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration under section 1 or 3 of this chapter or a notice under section 5 of this chapter for the unexpired portion of the current registration or notice filing.

(b) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this article. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this article shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after filing its amendment to effect succession.

(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this article.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-8

Termination notice; transfer of employment or association; temporary registration; prevention or suspension of transfer; cancellation or termination of registration; reinstatement
Effective 7-1-2008.

Sec. 8. (a) If an agent registered under this article terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this article terminates employment by or association with an investment adviser

or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) If an agent registered under this article terminates employment by or association with a broker-dealer registered under this article and begins employment by or association with another broker-dealer registered under this article, or if an investment adviser representative registered under this article terminates employment by or association with an investment adviser registered under this article or a federal covered investment adviser that has filed a notice under section 5 of this chapter and begins employment by or association with another investment adviser registered under this article or a federal covered investment adviser that has filed a notice under section 5 of this chapter, then upon the filing by or on behalf of the registrant, within thirty (30) days after the termination, of an application for registration that complies with the requirement of section 6(a) of this chapter and payment of the filing fee required under section 10 of this chapter, the registration of the agent or investment adviser representative is:

(1) immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve (12) months; or

(2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve (12) months.

(c) The commissioner may withdraw a temporary registration if there are or were grounds for discipline as specified in section 12 of this chapter and the commissioner does so within thirty (30) days after the filing of the application. If the commissioner does not withdraw the temporary registration within the thirty (30) day period, registration becomes automatically effective on the thirty-first day after filing.

(d) The commissioner may prevent or suspend the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (b)(2) based on the public interest and the protection of investors. The commissioner, by order, may also extend a temporary registration to permit further time to review the qualifications of an applicant.

(e) If the commissioner determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a

broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this article may require the registration be canceled or terminated or the application denied. The commissioner may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-9

Withdrawal of registration

Effective 7-1-2008.

Sec. 9. Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty (60) days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this article unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this article. The commissioner may institute a revocation or suspension proceeding under section 12 of this chapter within one (1) year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-10

Fees; transmittal of fee; exception

Effective 7-1-2008.

Sec. 10. (a) A person shall pay a fee of two hundred fifty dollars (\$250) when initially filing an application for registration as a broker-dealer and a fee of one hundred twenty-five dollars (\$125) when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(b) The fee for an individual is twenty-five dollars (\$25) when filing an application for registration as an agent, a fee of twenty-five dollars (\$25) when filing a renewal of registration as an agent, and a fee of twenty-five dollars (\$25) when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(c) A person shall pay a fee of one hundred dollars (\$100) when filing an application for registration as an investment adviser and a fee of fifty dollars (\$50) when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(d) The fee for an individual is twenty-five dollars (\$25) when filing an application for registration as an investment adviser

representative, a fee of twenty-five dollars (\$25) when filing a renewal of registration as an investment adviser representative, and a fee of twenty-five dollars (\$25) when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the commissioner shall retain all of the fee.

(e) A federal covered investment adviser required to file a notice under section 5 of this chapter shall pay an initial fee of fifty dollars (\$50) and an annual notice fee of fifty dollars (\$50).

(f) A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this article.

(g) An investment adviser representative who is registered as an agent under section 2 of this chapter and who represents a person that is both registered as a broker-dealer under section 1 of this chapter and registered as an investment adviser under section 3 of this chapter or required as a federal covered investment adviser to make a notice filing under section 5 of this chapter is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

As added by P.L.27-2007, SEC.23.

IC 23-19-4-11

Minimum financial requirements; financial reports; amendment; records; audits or inspections; insurance or posting bond; supervision; continuing education; compliance reports

Effective 7-1-2008.

Sec. 11. (a) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), a rule adopted or order issued under this article may establish minimum financial requirements for broker-dealers registered or required to be registered under this article and investment advisers registered or required to be registered under this article.

(b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a(b)), a broker-dealer registered or required to be registered under this article and an investment adviser registered or required to be registered under this article shall file such financial reports as are required by a rule adopted or order issued under this article. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a):

(1) a broker-dealer registered or required to be registered under this article and an investment adviser registered or required to be registered under this article shall make and maintain the accounts, correspondence, memoranda, papers, books, and other

records required by rule adopted or order issued under this article;

(2) broker-dealer records required to be maintained under subdivision (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)) if they are readily accessible to the commissioner; and

(3) investment adviser records required to be maintained under subdivision (1) may be maintained in any form of data storage required by rule adopted or order issued under this article.

(d) The records of a broker-dealer registered or required to be registered under this article and of an investment adviser registered or required to be registered under this article are subject to such reasonable periodic, special, or other audits or inspections by a representative of the commissioner, within or outside this state, as the commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The commissioner may copy, and remove for audit or inspection copies of, all records the commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The commissioner may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), a rule adopted or order issued under this article may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed fifty thousand dollars (\$50,000). The commissioner may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this article whose net capital exceeds, or of an investment adviser registered under this article whose minimum financial requirements exceed, the amounts required by rule or order under this article. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in IC 23-19-5-9(g).

(f) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this article may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or

securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) With respect to an investment adviser registered or required to be registered under this article, a rule adopted or order issued under this article may require that information or other records be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) A rule adopted or order issued under this article may require an individual registered under section 2 or 4 of this chapter to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this article may require continuing education for an individual registered under section 4 of this chapter.

(i) The commissioner may annually select as many as twenty-five percent (25%) of all Indiana home and branch offices of registered broker-dealers for completion of compliance reports. Each broker-dealer office that is selected shall file its compliance report according to rules adopted by the commissioner under this article not more than ninety (90) days after being notified of selection under this subsection. No charges or other examination fees may be assessed against a registered broker-dealer as a result of the examination of a compliance report filed under this subsection unless the examination results in an investigation or examination made under IC 23-19-6-2(a).

As added by P.L.27-2007, SEC.23.

IC 23-19-4-12

Denial, condition, revocation, suspension, or limitation of registration; censure, bar, or civil penalty for violation; grounds; examination; procedure

Effective 7-1-2008.

Sec. 12. (a) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this article may deny an application, or may condition or limit registration, of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(b) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this article may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. However, the commissioner may not:

(1) institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the commissioner or a designee of the commissioner more than one (1) year after the date of the order on which it is based; or

(2) under subsection (d)(5)(A) and (d)(5)(B), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) If the commissioner finds that the order is in the public interest and subsection (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), (d)(8), (d)(9), (d)(10), (d)(12), or (d)(13) authorizes the action, an order under this article may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of ten thousand dollars (\$10,000) per violation on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(d) A person may be disciplined under subsections (a) through (c) if the person:

(1) has filed an application for registration in this state under this article or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) knowingly violated or knowingly failed to comply with this article or the predecessor act or a rule adopted or order issued under this article or the predecessor act within the previous ten (10) years;

(3) has been convicted of a felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) is enjoined or restrained by a court with jurisdiction in an action instituted by the commissioner under this article or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing, by:

(A) the securities, depository institution, insurance, or other financial services regulator of a state or by the Securities and Exchange Commission or other federal agency denying,

revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) the securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) the Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) a court adjudicating a United States Postal Service fraud order;

(E) the insurance regulator of a state denying, suspending, or revoking registration as an insurance agent;

(F) a depository institution regulator suspending or barring the person from the depository institution business; or

(G) any state regulatory body or organization governing real estate brokers or sales persons denying, suspending, or revoking a person's registration or license in the real estate industry;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the commissioner may not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the commissioner from conducting an audit or inspection under section 11(d) of this chapter or refuses access to a registrant's office to conduct an audit or inspection under section 11(d) of this chapter;

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this article or the predecessor act or a rule adopted or order issued under this article or the predecessor act within the previous ten (10) years;

(10) has not paid the proper filing fee within thirty (30) days after having been notified by the commissioner of a deficiency, but the commissioner shall vacate an order under this subdivision when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous ten (10) years:

(A) by a court with jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten (10) years;

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this subdivision if the individual has successfully completed all examinations required by subsection (e). The commissioner may require an applicant for registration under section 2 or 4 of this chapter who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination; or

(15) is on the most recent tax warrant list supplied to the commissioner by the department of state revenue.

(e) A rule adopted or order issued under this article may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this article may waive, in whole or in part, an examination as to an individual and a rule adopted under this article may waive, in whole or in part, an examination as to a class of individuals if the commissioner determines that the examination is not necessary or appropriate in the public interest and for the

protection of investors.

(f) The commissioner may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the commissioner shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) An order may not be issued under this section, except under subsection (f), without:

- (1) appropriate notice to the applicant or registrant;
- (2) opportunity for hearing; and
- (3) findings of fact and conclusions of law in a record.

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the commissioner under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) The commissioner may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the commissioner unless an investigation or the proceeding is instituted within one (1) year after the commissioner actually acquires knowledge of the material facts.

(j) All fines and penalties collected under this section shall be deposited into the securities division enforcement account as established by IC 23-19-6-1(f).

As added by P.L.27-2007, SEC.23.